

EXHIBIT 7

**to Declaration of William J. Goines in Opposition to
Plaintiffs' Motion for Class Certification**

Golden Gate Reporting

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4
5 ANN OTSUKA, an individual;)
6 et al.,)
7 Plaintiffs,)
8 vs.) No. C-07-02780-SI.
9 POLO RALPH LAUREN)
10 CORPORATION, a Delaware)
11 Corporation; et al.,)
12 Defendants.)
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20 REPORTED BY:
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22
23
24 PATRICIA L. HUBBARD
25 CSR #3400, CRP #10, RPR #7847

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1 A. Polo Ralph Lauren.

2 Q. Did you have any other college
3 experience?

4 A. Yes. I did attend San Jose State
5 university, as well.

6 Q. And when was that?

7 A. That was after 1995. 10:30

8 Q. And during what years?

9 A. It was the year between 1995 and 1996.

10 Q. And what was the purpose of that?

11 A. Post-baccalaureate.

12 Q. Did you get a certificate or degree?

13 A. Yes.

14 Q. What was that?

15 A. It was a biology post-baccalaureate.

16 Q. What was your start date with Polo Ralph
17 Lauren? 10:31

18 A. If I can recall correctly, it was in
19 June of 1995. I actually worked during the time that
20 I was with -- attending University of Illinois at the
21 outlet store.

22 Q. Which outlet store?

23 A. Tuscola.

24 Q. Is that in Illinois?

25 A. Yes.

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1 Q. Were you a sales associate?

2 A. I don't -- I'm not certain if that's the
3 title that was given.

4 Q. Was there some sort of a loss prevention
5 program in place at that store at that time that
6 you're aware of?

7 A. I don't recall.

10:33

8 Q. What did you do after -- in terms of
9 work after the six months at the outlet store in
10 Tuscola, Illinois?

11 A. From my -- from my graduating with
12 University of Illinois, I went out to San Jose,
13 California, and that's when I started with the -- the
14 store in Santa Clara with Ralph Lauren.

15 Q. Is that an outlet store?

16 A. It was a retail store.

17 Q. What was your job title at that time?

10:33

18 A. Sales associate.

19 Q. And during what time period did you work
20 as a sales associate at the Santa Clara retail store?

21 A. I don't recall the exact time frame.

22 Q. What's your best estimate as to the date
23 you began working there and the date that you stopped
24 working there as a sales associate?

25 A. I was promoted within the store. So my

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1 best guesstimate is that I was a sales associate for
2 about six months.

3 Q. When did you start working as a sales
4 associate at the Santa Clara store?

5 A. 1995.

6 Q. And during that same year you were
7 promoted; is that correct?

10:34

8 A. That's correct.

9 Q. And to what job position were you
10 promoted?

11 A. Men's department manager.

12 Q. I'm sorry. Men's department?

13 A. Manager.

14 Q. And how long did you work as a men's
15 department manager at the Santa Clara store?

16 A. Again I don't recall the exact time
17 frame.

10:35

18 Q. What's the best estimate that you have
19 regarding the duration of your role as a men's
20 department manager at the Santa Clara store?

21 A. Can you rephrase that question?

22 Q. Sure. How long did you work as a men's
23 department manager at the Santa Clara retail store?

24 Q. What's your best estimate as to the
25 duration?

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1 A. My best estimate, it's probably four or
2 five months.

3 Q. And then what happened?

4 A. Then I was promoted to the general
5 manager of the store.

6 Q. And how long did you work as GM -- do
7 you call it GM? 10:35

8 A. GM.

9 Q. How long did you work as a GM at the
10 Santa Clara store?

11 A. Again the time frame is -- it's not
12 clear.

13 Q. What's your best estimate as to when you
14 were promoted to GM?

15 A. Within the year being the general
16 manager there.

17 Q. So, in about 1996? 10:36

18 A. Yes.

19 Q. And how long did you work as GM at the
20 Santa Clara store?

21 A. For about a year.

22 Q. And then what happened?

23 A. Then I was promoted to the store in
24 Waikiki in Hawaii as the general manager.

25 Q. Why was that a promotion?

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1 A. A promotion in volume.

2 Q. And how long did you work as the Waikiki
3 GM?

4 A. For about a year, as well.

5 Q. And then what happened in terms of your
6 job?

7 A. The company decided to close down the 10:36
8 store, at which time I was transitioned to help the
9 store in Ala Moana, which is also in Hawaii.

10 Q. Were you a GM at that time?

11 A. I was -- I was just in transition as a
12 support.

13 Q. How long did you do that?

14 A. I don't recall the exact time.

15 Q. What's your best estimate?

16 A. Several months.

17 Q. And then what happened next in terms of 10:37
18 your job with Polo Ralph Lauren?

19 A. I was transitioned into an assistant GM
20 role to the Ala Moana store.

21 Q. And how long did you do that?

22 A. Again the time frame is not exact in my
23 mind right now.

24 Q. What's your best estimate as to the
25 duration of that position?

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1 A. Within six months.

2 Q. And then what happened?

3 A. Then after that I was repromoted to the
4 GM of the Ala Moana store.

5 Q. And how long did you do that?

6 A. Again this is a guesstimate, but I do
7 believe it was around two years' time. 10:38

8 Q. And then your next position?

9 A. My next position was -- I came back to
10 California, but I forgot exactly which store I came
11 back to California to.

12 Q. Was it in Northern California or
13 Southern California?

14 A. It is Northern California.

15 Q. And you were a GM at that time?

16 A. Yes.

17 Q. And how long did you do that? 10:39

18 A. For -- again this is a guesstimate.
19 Probably a year and a half.

20 Q. And what year is this now that you were
21 a GM at this Northern California store after
22 returning from Hawaii?

23 A. My guess is that I was back in
24 California in 2003.

25 Q. Where were you living at that time?

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1 A. In Northern California, north of
2 San Jose, San Mateo area.

3 Q. Do you know if it was the Palo Alto
4 store?

5 A. I don't recall honestly if it was Palo
6 Alto or San Francisco that I was involved with first.

7 Q. Okay. So returning to Northern 10:40
8 California and working as a GM for a one and a
9 half-year period beginning in about 2003, you're at
10 either the Palo Alto store or the San Francisco
11 store; is that correct?

12 A. That's correct.

13 Now that we went through that sequence,
14 it is the Palo Alto, store, yes, that I was there
15 first.

16 Q. So you were at the Palo Alto store at 10:40
17 this time for about a year and a half; is that
18 correct?

19 A. That's correct.

20 Q. And then what happened?

21 A. And then I was asked to -- to go to the
22 San Francisco store.

23 Q. So you became the GM of the
24 San Francisco store?

25 A. I was asked to help out at first, and

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1 then later on within the next several months, then I
2 was placed as the GM in San Francisco.

3 Q. When did you first start helping out at
4 the San Francisco store?

5 A. I don't recall the exact dates.

6 Q. What's your best estimate?

7 A. Possibly in 2004 sometime.

10:41

8 Q. And how long were you helping out before
9 you were asked to become a GM at the San Francisco
10 store?

11 A. A short period of time, a few months.

12 Q. How long did you serve as the
13 San Francisco store GM?

14 A. For about, again, a little bit over a
15 year.

16 Q. And what's your best estimate as to the
17 start and stop dates during which you served as 10:41
18 San Francisco store GM?

19 A. I don't recall.

20 Q. And what was your next job position
21 after that?

22 A. I was promoted to oversee San Francisco,
23 Burlingame and Palo Alto at that time.

24 Q. And what was your job title at that
25 time?

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1 A. Area manager.

2 Q. And how long did you do that?

3 A. Approximately a year and a half, as well.

5 Q. What was your next job position?

6 A. At which time in -- I do believe it was

7 the end of March, 2007 -- beginning of March of 2007

10:42

8 I left the company. I was unemployed for about three weeks, a month.

10 Q. And then?

11 A. And then after that I started to work
12 for Georgio Armani as a general manager.

13 Q. Where was that store?

14 A. It was in San Francisco.

15 Q. Why did you leave Polo Ralph Lauren?

16 A. I just felt that it was time for me
17 to -- to step away for a little bit and take a short
18 break and -- and to look at different opportunities.

19 Q. Why did you feel it was time for you to
20 step away?

21 A. I had been with the company for 13
22 years, and I just wanted to see what other
23 opportunities were out there.

24 Q. Did the Armani store in San Francisco
25 have some sort of program for conducting loss

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1 communicated by GM's to all employees?

2 A. As far as I know, the day that I was
3 hired.

4 Q. Is it your understanding that these
5 policies were applied in all stores, not just the
6 ones you worked in?

7 MR. GOINES: Objection. Overbroad.

10:56

8 THE WITNESS: Can you rephrase that question.

9 BY MR. GRIGG:

10 Q. Sure. Is it your understanding that the
11 policy that all GM's had to educate all employees to
12 employee handbook policies and procedures was in
13 effect at all Polo stores, Polo Ralph Lauren stores?

14 A. I don't have the answer for all the
15 stores, but I know that it's the policy that I
16 upheld.

17 Q. Have you heard anything to the effect

10:56

18 that it was required at other stores?

19 A. I have not.

20 Q. Have you had any training by Polo Ralph
21 Lauren or by anyone else that suggested to you
22 that -- strike that. I'll withdraw that.

23 Did you ever hear any complaints about
24 the loss prevention practices in effect at any Polo
25 Ralph Lauren stores?

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1 A. I don't recall.

2 Q. Did Rosalinda Wallwork ever have a
3 conversation with you about concerns raised about
4 loss prevention practices?

5 A. I don't recall.

6 Q. Did any employee ever say to you, "Hey,
7 I've been waiting at the back door" or any door "in 10:57
8 order to get out for a loss prevention practice" --
9 "loss prevention search"?

10 A. Not that I can recall.

11 Q. Well, let's talk about your time as
12 first the GM at the Palo Alto store. Let's just go
13 through an average day.

14 What time would people -- would the
15 first people get to the store in the morning in
16 Palo Alto during the time that you were GM?

17 A. It all depends. When you say "people," 10:58
18 who is that?

19 Q. Anyone.

20 MR. GOINES: Are you talking about employees?

21 Are you talking about customers? Are you talking
22 about --

23 BY MR. GRIGG:

24 Q. Anyone.

25 A. So the first employee --

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1 decided, that the standard is represented to the
2 Ralph Lauren standards, then we would say, you know,
3 everyone to clock out.

4 And then they would go to the doors
5 where the managers are waiting. And then that's when
6 everyone gets checked out at the same time and leave
7 the building.

11:03

8 Q. So generally all associates would leave
9 at the same time?

10 A. Generally, yes. Unless there will be
11 times where they have appointments already where they
12 need to leave prior, you know, with approval.

13 Q. How long would it be for an average --
14 how long would an average employee have to wait on an
15 average night to -- between the time that they
16 clocked out and the time that they actually get out
17 the door?

11:03

18 A. There shouldn't be any waiting period
19 except for the period that they grab their bags and
20 go to the front door. There are -- actually probably
21 more often than not, they actually grab their bags
22 and everything and then clock out and then go to the
23 door.

24 So I would say a minute or two.

25 Q. So one to two minutes on average between

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1 the time someone clocks out and gets out the door at
2 the end of the day; is that correct?

3 A. That's correct.

4 Q. Did you ever hear of anyone waiting
5 longer than that?

6 A. Not that I can recall, no.

7 Q. Did any employee ever complain to you, 11:04
8 about spending too much time with the loss prevention
9 inspection?

10 A. Not that I can recall.

11 Q. Did you ever get back to the door and
12 see people sitting on the ground saying, "Hey, we've
13 been waiting"?

14 A. Not that I know of.

15 Q. Did you ever talk to anyone higher up in
16 the company about loss prevention inspections?

17 A. No. Not that I know.

11:05

18 Q. Did employees at the -- when you were
19 the GM at the Palo Alto store take rest breaks?

20 A. Absolutely.

21 Q. And what was the policy for employees
22 taking rest breaks in effect while you were the
23 Palo Alto store GM?

24 A. I know that -- first of all, I know the
25 company cares a lot about making sure that the

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1 employees get their rest break, and we encourage it,
2 and make sure that they have full understanding that
3 we encourage it and want to make sure that everyone
4 does it.

5 But we also allow the individual to,
6 decide, you know, for both mornings, lunch and
7 evening as to when they -- they want to take that.

11:06

8 Q. And you said, "We make sure they have
9 full understanding about that"; is that correct?

10 A. That is correct.

11 Q. And how does Polo make sure that the
12 employees have a full understanding that they're
13 entitled to a rest break or can work through it if
14 they want?

15 MR. GOINES: Objection. Mischaracterizes
16 testimony.

17 THE WITNESS: Can you rephrase that question? 11:06

18 BY MR. GRIGG:

19 Q. Sure. How did your company, Polo, make
20 sure that employees understood that they were
21 entitled to take a rest break if they wanted, but
22 could work through it if they wanted?

23 MR. GOINES: That's not what he said.

24 BY MR. GRIGG:

25 Q. Is that --

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1 MR. GOINES: Argumentative.

2 BY MR. GRIGG:

3 Q. Am I misstating what you said?

4 A. That's correct, sir.

5 Q. How am I misstating what you said?

6 A. I have spoken that we encourage and
7 would like all employees to take advantage of their
8 breaks, including lunch breaks, throughout the day. 11:07

9 Q. And you somehow communicated this to
10 employees; is that correct?

11 A. We do communicate all benefits to
12 employees via the employee handbook, as I stated
13 earlier, that we would sit down at the beginning of
14 when they're hired, and we verbally would walk
15 through and read through all the handbooks.

16 Q. So when you were the Palo Alto GM, you
17 walked through all the employee handbooks with all
18 the employees; is that correct? 11:07

19 A. That's correct.

20 Q. Did you also have them sign the employee
21 handbooks?

22 A. There is a section at the end of the
23 handbook that requires a signature, yes.

24 Q. So what was your -- did you have a
25 custom and practice in terms of complaining to them

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1 with what frequency did employees take their rest
2 breaks?

3 A. Can you rephrase that?

4 Q. Sure. Did most employees take all the
5 rest breaks to which they were entitled?

6 A. To my knowledge, yes.

7 Q. Did it ever come to your attention that, 11:17
8 an employee had missed a rest break?

9 A. Not that I know.

10 Q. Were there certain times when the store
11 was so busy that it would have been difficult for an
12 employee to take a rest break at either the Palo Alto
13 or the San Francisco store?

14 A. Not that I can recall.

15 Q. Did you ever say anything to the effect
16 of an employee should wait before taking their rest
17 break? 11:18

18 A. No. Not that I can recall.

19 Q. Did any other manager, to your
20 knowledge, say that to a sales associate at any time;
21 in other words, "You should wait before taking your
22 rest break"?

23 A. No. Not to my knowledge.

24 Q. Did you ever hear or engage in any
25 communications to the effect that a sales associate

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1 Q. Under what circumstances -- I'm sorry.

2 I spoke over you.

3 What were you saying?

4 A. No. I said I don't recall exactly when
5 the time frame of the arrears program was in place.

6 So I can't answer that to that specific.

7 Q. Okay. Then I somewhat amended my

11:59

8 question by saying under what circumstances.

9 A. What does that mean?

10 Q. Under what circumstances did you become
11 aware of the arrears program?

12 A. How did I receive the information?

13 Q. Yes.

14 A. Okay. As I stated at the beginning of
15 this conversation, that the company is very effective
16 in the way that we communicate -- the corporate
17 office communicates out information. So once we get
18 communication -- or I get communication from the
19 corporate office, then we would host an overall store
20 meeting, and then the individual that's effected will
21 be communicated individually.

12:00

22 Q. Okay. You just said the company's very
23 effective about communicating out information.

24 What do you mean by that?

25 A. That if there were to be any newness in

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1 policies, anything that needs to be announced to the
2 store staff and team, then we would usually host a
3 meeting, an overall meeting in the store to
4 communicate that, the information, to the staff.

5 Q. And how was information transmitted from
6 the company to general managers?

7 A. We usually would either have a 12:01
8 conference call or an e-mail or communication from
9 the general manager's direct supervisor.

10 Q. And who would that be?

11 A. In my case, it would be Kim Babka.

12 Q. And by what means did you learn about
13 the arrears program initially?

14 A. I don't recall the exact meeting.

15 Q. What do you recall being told about the
16 arrears program when you first learned about it?

17 A. That it's part of our compensation. 12:01
18 program.

19 Q. And did you convey information
20 concerning the arrears program to sales associates?

21 A. Yes.

22 Q. And how did you do that?

23 A. Again through store meetings and through
24 individual one-on-one's.

25 Q. Did you have a store meeting during

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1 which the arrears program was discussed?

2 A. Yes. I don't recall when or how

3 exactly, but I always would have a store meeting
4 around all communications.

5 Q. When you say you would always have a
6 store meeting around all communications, what do you
7 mean by that?

12:02

8 A. If there were to be a new -- again, a
9 new launch of certain policies or procedures or new
10 company's announcements that is in a grander scale
11 that needs to be heard by all employees, then we
12 would have a store meeting.

13 Q. And what -- who decides whether it needs
14 to be heard by all employees?

15 A. It's uniformly usually decided by,
16 again, corporate office or my direct supervisor or at
17 times my own initiation.

12:02

18 Q. But you specifically recall having a
19 meeting during -- an all-hands meeting; is that
20 correct? In other words, all sales associates?

21 A. Correct.

22 Q. Concerning the arrears program; is that
23 correct?

24 A. That's correct.

25 Q. Did you have one-on-one counseling --

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1 one-on-one conversations, rather, about the arrears
2 program with sales associates?

3 A. Yes.

4 Q. And what were the names of any sales
5 associates with whom you had a conversation about the
6 arrears program, if you can recall any of their
7 names?

12:03

8 A. I don't recall any of the names, but I
9 know that one-on-one's was -- were carried out for
10 all employees -- sales associates.

11 MR. GOINES: Is this a convenient time to take
12 a short break?

13 MR. GRIGG: Sure.

14 MR. GOINES: Okay.

15 (Brief recess.)

16 BY MR. GRIGG:

17 Q. During your tenure at the San Francisco
18 and Palo Alto stores did you ever have problems with
19 sales associates taking too many rest breaks? 12:18

20 A. No. Not that I can recall.

21 Q. Did you ever have problems with sales
22 associates taking rest breaks that were too long?

23 A. No, not that I can recall.

24 Q. Did you ever have to ask, encourage or
25 instruct a sales associate to get back on the floor

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1 says,

2 "Any remaining arrears balance
3 owed will be captured on the
4 March 31st paycheck."

5 Did that occur?

6 A. I would assume that it did.

7 Q. And why would you assume that it did? 12:48

8 A. Because it's stated.

9 Q. And what is this document?

10 How would you have gotten this?

11 A. It's -- again it's probably through a
12 format of communication through the web, e-mails,
13 personally delivered by my direct supervisor, but
14 usually in the same format as described above with
15 all communications.

16 Q. With whom did you discuss this document?

17 A. Can you rephrase that? 12:49

18 With whom did I discuss about the
19 documents or about --

20 Q. Yeah, this document, did you discuss
21 this document with anyone?

22 A. We -- I went over the documentations
23 again in a group meeting with the staff and any
24 individual that's been affected by this, yes.

25 Q. So you specifically told sales

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1 associates that the arrears program was terminated;

2 is that correct?

3 A. That's correct.

4 Q. And you told all sales associates that,

5 correct?

6 A. Yes. To my knowledge, yes.

7 Q. And then on the next page it talks about 12:50

8 a base-plus commission option. And then in the notes

9 portion it says,

10 "Associates on this program must

11 not work more than 40 hours in a

12 given week."

13 Do you see that (indicating), under the

14 notes portion?

15 A. Okay.

16 Q. Before we talked about that.

17 Have you seen this document, too, or is 12:50

18 this -- was this connected to the same document, do

19 you know?

20 A. I don't recall the exact content on the

21 documents that I viewed.

22 Q. Is it your understanding that the

23 employees on the base-plus commission option must not

24 work more than 40 hours in a given week?

25 MR. GOINES: Objection. Lack of foundation.

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1 entail?

2 A. Just printing reports, showing what the
3 sales were for the day, and, you know, how much --
4 what kind of tenders and how much we have taken in
5 for the day.

6 Q. And where would they print out these
7 reports? 13:50

8 A. In the operations office.

9 Q. And what are the titles of these reports
10 they're printing out?

11 A. Sales reports.

12 Q. Any other reports?

13 A. I don't know the exact name of the other
14 reports.

15 Q. What other duties would the other
16 manager, in other words, not the on-the-floor
17 manager, have around closing time? 13:51

18 A. I think to the most part that's all.

19 Q. Did you discuss the arrears program with
20 Janice Keefe, also known as Janice Howay?

21 A. I don't remember that particular
22 program, but, yes, I've discussed the content of the
23 employees handbook, which the arrears was in.

24 Q. I'm sorry. Did you just say that you
25 discussed the content of the arrears program in the

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1 employee handbook?

2 A. That's correct.

3 Q. What employee handbook was the arrears
4 program in?

5 A. All of the -- can you rephrase that
6 question?

7 Q. Sure. It's my understanding that you 13:52
8 discussed the content of the arrears program as that
9 was set forth in some handbook.

10 A. Uh-huh. It was either the handbook or
11 the communication, at which time, yes.

12 Q. So the arrears program you're saying may
13 not have been set forth in an employee handbook, but
14 instead may have been set forth in a different
15 document, correct?

16 A. That's correct, yeah.

17 Q. And you would have discussed that with 13:52
18 Janice Keefe, also known as Janice Noway, correct?

19 A. That's correct.

20 Q. And did you also discuss it with Corrine
21 Mullen?

22 A. Yes.

23 Q. Did they say anything about the arrears
24 program when you first told them about it?

25 A. Not that I can recall, no.

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1 A. I would say yes.

2 Q. Did you tell N. Otsuka about the arrears
3 process or arrears program?

4 A. Yes.

5 Q. And what did you tell her about it?

6 A. I think the same format of communication
7 with everyone, how the pay structure works and how 14:08
8 she is being compensated for her time for commission
9 pay.

10 Q. Did she ask you any questions about it?

11 A. I usually with the same format would
12 show the example and ask if there is any questions
13 surrounding how you are being paid, yes.

14 Q. Do you recall if she asked you any
15 questions about it?

16 A. I don't recall that, no.

17 Q. I'm going to show you what we've 14:09
18 previously marked as Exhibit 32 and ask you if you
19 recognize that.

20 A. Vaguely I think I have seen this, yes.

21 Q. And in what context do you think you saw
22 this?

23 A. If I can recall correctly, it is after I
24 have reacquired the Palo Alto store going through
25 individual documentations that I came across this

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1 particular letter.

2 Q. When you say after you reacquired the
3 Palo Alto store, are you talking about when you got a
4 promotion such that you were overseeing the
5 Palo Alto, San Francisco and Burlingame stores?

6 A. That's correct.

7 Q. And at that time you discovered this 14:10
8 when or you came across this in what context?

9 A. As I was going through all the older --
10 all the files just to make sure that we cleaned out
11 all the employee files.

12 Q. And did you have any conversation with
13 anyone about this letter?

14 A. I didn't, no.

15 Q. Did you read this letter at that time?

16 A. I don't think I read it in its full
17 content, no. 14:10

18 Q. In this letter she says in the first
19 paragraph in the middle,

20 "It was not until I inquired
21 about a major discrepancy in my
22 last paycheck that I was informed
23 of a program known as arrears."

24 Q. Do you know if that's true, that she
25 wasn't informed of a program known as arrears until,

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1 based on the date of this letter, sometime in October
2 of 2004?

3 A. I can't speak to what she says. I can
4 speak to that when she was hired she was communicated
5 to.

6 Q. When she was hired she was
7 communicated --

14:11

8 A. To the arrears program and the
9 compensation program.

10 Q. And that was because you told her about,
11 it; is that correct?

12 A. That's correct.

13 Q. Are employees generally told if they're
14 not making their sales targets?

15 A. They would be -- they would be
16 communicated to on a monthly basis, and generally in
17 formal conversations and coaching happened, you know,
18 throughout the weeks and during the week, as well,
19 but the formal one would be a sit down one-on-one at
20 the end of the month or usually the week after the
21 month has ended, the first week after the month has
22 ended.

14:11

23 Q. And when did that monthly counseling
24 first go into effect, that one-on-one counseling?

25 When did that first start?

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EXHIBIT 8

**to Declaration of William J. Goines in Opposition to
Plaintiffs' Motion for Class Certification**

Golden Gate Reporting

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4
5 ANN OTSUKA, an individual; JANIS No. C-07-02780-SI
6 KEEFE, an individual; CORINNE
7 PHIPPS, an individual; and
8 JUSTIN KISER, an individual;
9 individually and on behalf of
10 all others similarly situated,
11 Plaintiffs,
12 vs.
13 POLO RALPH LAUREN CORPORATION;
14 a Delaware Corporation; POLO
15 RETAIL, LLC, a Delaware Corporation;
16 POLO RALPH LAUREN CORPORATION, a
17 Delaware Corporation, doing business
18 in California as POLO RETAIL CORP;
19 FASHIONS OUTLET OF AMERICA, INC., a
20 Delaware Corporation and DOES 1-500,
21 inclusive,
22 Defendants.

16
17 DEPOSITION OF PHOEBE MIRELES
18

19 DATE: November 15, 2007
20 TIME: 10:15 a.m.
21 LOCATION: One Montgomery Street
22 Suite 3220
23 San Francisco, California
24 REPORTED BY: Mary E. Garland
25 Certified Shorthand Reporter
 License Number 4721

Page 1

Golden Gate Reporting

1 case?

2 A. No.

3 Q. Have you seen the Web site poloclassaction.com,
4 that we established for this case?

5 A. No.

6 Q. Have you discussed the case, other than with
7 Ms. Louie, with any other persons?

8 A. No.

9 Q. Do you know where Mr., I believe it's, Zablan
10 currently resides?

11 A. I believe it's in Hawaii.

12 Q. Does he go by another name, other than that?

13 A. Yes. That is actually his middle name. His
14 first name is Zane.

15 Q. Z-a-n-e?

16 A. Yes.

17 Q. And his last name is spelled?

18 A. Z-a-b-l-a-n. Zablan.

19 Q. Do you know which island of Hawaii he lives on?

20 A. Oahu.

21 Q. Have you ever discussed any of the claims in
22 this case with him?

23 A. No.

24 Q. I'd like to have you, just briefly, give me a
25 thumbnail sketch of your education after high school.

Golden Gate Reporting

1 A. Okay. I studied briefly at the Honolulu
2 Community Collage in Oahu, and took a couple classes at
3 the University of Hawaii.

4 Q. And what were the courses?

5 A. It was fashion merchandising.

6 Q. Any other formal education after high school?

7 A. No.

8 Q. Would you give me a thumbnail sketch of your
9 employment background, beginning with your first
10 position in the retail business.

11 A. First position ever was with Louis Vuitton,
12 part-time in high school. Then I started with Ralph
13 Lauren. And that was in 1996, summer of '96, I want to
14 say it was June. And I was there part-time, as a
15 cashier, in high school.

16 Q. Which store did you work in for Polo?

17 A. Ralph Lauren in Honolulu.

18 Q. And how long did you work as a cashier in
19 Honolulu?

20 A. '96, '97, '98. Probably a year and a half.

21 Q. Through sometime in 1998?

22 A. Yes. And then --

23 Q. Did you remain a cashier, through that time,
24 part-time?

25 A. Yes. Part-time cashier.

Golden Gate Reporting

1 Q. After that position at Polo, what was your next
2 position in the retail business?

3 A. I went on to be a sales associate, from about
4 '98 to 2000.

5 Q. And was that in Honolulu?

6 A. Yes.

7 Q. And throughout that time, your position was
8 sales associate?

9 A. Yes.

10 Q. Were you ever designated a senior seller?

11 A. No.

12 Q. And your next position in retail?

13 A. It was as an assistant Men's manager, still
14 there in the Honolulu location.

15 Q. And that began sometime approximately in 2000?

16 A. In 2000.

17 Q. Until when?

18 A. Until 2002.

19 Q. And throughout that time, did you remain as an
20 assistant manager?

21 A. Yes.

22 Q. In the Men's department?

23 A. Yes.

24 Q. What was your next position in retail?

25 A. Then I was the Women's manager, and was

Golden Gate Reporting

1 transferred to the Stanford location.

2 Q. Did you become the Women's manager in Hawaii?

3 A. No.

4 Q. So you became the Women's manager --

5 A. At Stanford.

6 Q. -- at Stanford?

7 A. Mm-hm.

8 Q. In approximately 2002?

9 A. Mm-hm.

10 Q. Yes?

11 A. Yes. It was in April or May of '02.

12 Q. And when you first began, who was the store's
13 general manager?

14 MR. GOINES: You're talking about Stanford?

15 MR. KITCHIN: Correct.

16 THE WITNESS: Her name was Christy Hannaford.

17 Q. BY MR. KITCHIN: And how long did you remain
18 the Women's manager at Stanford?

19 A. I was the Women's manager until about the
20 summer of '04.

21 Q. And in the summer of '04, what was your
22 position?

23 A. Then I became the general manager.

24 Q. Again, at the Stanford?

25 A. Yes.

Golden Gate Reporting

1 Q. And how long did you remain the general manager
2 at Stanford?

3 A. I left the company, in that position, in April
4 of '05. I believe it was April. Yes.

5 Q. And after leaving the Stanford Polo store, as
6 general manager, what was your next position?

7 A. Women's manager at Giorgio Armani, in May of
8 '05.

9 Q. I want to focus on the time period beginning in
10 April of '02, when you came to California to become the
11 Women's manager at the Stanford Polo store.

12 When you came to that store, did you undergo
13 any kind of orientation or training?

14 A. Hmm. It was very brief. It was an
15 introduction to my new role with the current general
16 manager, which was Christy Hannaford.

17 Q. How long did the actual orientation or training
18 take?

19 A. Possibly a few days, maybe my first week there.
20 I can't recall exactly.

21 Q. During that initial training by Ms. Hannaford,
22 did you speak with anyone about the employment laws in
23 California and how they are applied to retail workers?

24 A. No.

25 Q. Did anyone at that time discuss with you

Golden Gate Reporting

1 A. Yes.

2 Q. And did they have a break room in the store?

3 A. Yes.

4 Q. And did they have lockers in the store?

5 A. Yes.

6 Q. So would employees typically clock out and then
7 go to their lockers and get purses and personal
8 belongings?

9 A. No. They would actually get their things and
10 then clock out.

11 Q. How do you know that?

12 A. I remember them doing so.

13 Q. So employees would --

14 A. I don't know for sure if they did it all the
15 time, but I remember that.

16 Q. So you saw sales associates who were going to
17 the lockers to get their bags and personal items, taking
18 those items back to the cash register, and then clocking
19 out?

20 A. Yes. Say, they were leaving for the day, they
21 put their scarfs on, their jackets, grab their bags, go
22 downstairs, do their thing, and then meet someone at the
23 door.

24 Q. Were there ever times when you were paged to do
25 the loss prevention or bag checks for sales associates

Golden Gate Reporting

1 when you couldn't respond to them within a few minutes?

2 A. Sometimes. But typically, we would partner
3 with the other person. So if I was the one doing all
4 the deposits and the numbers, the other person, whether
5 it was a manager or senior seller, would have the keys
6 and be ready for them to leave.

7 Q. So more often than not, there were at least two
8 people in the store with keys who were permitted to let
9 people out of the store at the end of the shift?

10 A. If there are two managers, we had two sets of
11 keys. If there was one manager and, say, a senior
12 seller, we had one set of keys. Say, I was doing things
13 upstairs -- or vice versa, that person could do that
14 upstairs -- I would be downstairs with the keys or they
15 would be downstairs with the keys.

16 Q. Throughout the course of your employment at the
17 Stanford Shopping Center, did you ever hear of any sales
18 associates complaining that they had been required to
19 wait for what they thought was an unreasonable period of
20 time to be let out of the store to go home?

21 A. No, not to my knowledge.

22 Q. So you had never even heard from another
23 manager of such a complaint?

24 A. There's a possibility, yes.

25 Q. On what do you base the statement that there's

Golden Gate Reporting

1 a possibility?

2 A. I think it was brought to my attention that a
3 manager said that the associates complained about
4 waiting and they claimed it was like a few minutes, when
5 I don't know how long it was for the sales associates.

6 Q. Who claimed that it was a few minutes?

7 A. Any manager at the time. It could have been
8 Haaheo, it could have been -- who else was the manager
9 at the time? -- Sabrina. There was an assistant key
10 holder, Jennifer. I don't know for sure. It could have
11 been any one of them.

12 Q. Now, let me make sure we have this clear.

13 So a manager told you that sales associates had
14 complained about the wait time to get --

15 A. Yes.

16 Q. -- out of the store, and the manager told you
17 that the sales associates had only waited a few minutes?

18 A. Right.

19 Q. Based on your memory of this --

20 A. Right.

21 Q. -- did the sales associates tell the manager,
22 who told you, that they had only waited a few minutes,
23 or do you know?

24 A. I don't know.

25 Q. Was it your impression that the sales

Golden Gate Reporting

1 associates were complaining that they had to wait for
2 more than a few minutes?

3 A. No. Because I never got a complaint, a
4 personal complaint. This is all word of mouth, through
5 managers, or a manager -- I don't remember -- and it
6 wasn't something that happened very often. And if it
7 did, they would say it and it was in passing, and they
8 had apologized for maybe they were busy, in the
9 restroom. I don't know.

10 But I would always ask, "Well, why were they
11 waiting for that amount of time?" or however long it
12 was. But it was never more than a few minutes.

13 Q. On how many separate occasions do you recall
14 hearing from any source that sales associates were
15 complaining about having to wait too long to leave the
16 store?

17 A. Very few. And if it was, it was during a very
18 short period of time where we were maybe short on
19 managers. Just trying to think here. There's myself --
20 I would say just a few times. There wasn't a whole lot
21 of complaints that I can remember. And, again, it
22 wasn't to me; possibly to other managers.

23 Q. Were there any occasions where you learned from
24 any source that sales associates were complaining that
25 it took what they believed to be an unreasonable period

Golden Gate Reporting

1 of time to have a manager do a bag check so that they
2 could leave for their lunch break?

3 A. No.

4 Q. So you never heard that complaint --

5 A. No.

6 Q. -- while you were working there?

7 A. Not an unreasonable amount of time, no. But
8 what's unreasonable?

9 Q. Well, my question is: Did you ever hear from
10 any source that an employee, an associate, had
11 complained that they felt that they had had to wait for
12 some unreasonable period of time to get out of the store
13 to have their lunch?

14 A. No.

15 Q. I'd like to shift topics here a bit and talk
16 about the rest breaks that employees, sales associates,
17 received while they worked at Polo at Stanford.

18 A. Yes.

19 Q. What breaks did a full-time employee get during
20 a full-day shift?

21 A. They got two 15-minute breaks and one hour
22 lunch break. The two 15-minute breaks were on the
23 clock, the hour lunch break was off the clock.

24 Q. Did you ever hear from any source, during the
25 time you worked at the Polo Stanford Shopping Center,

Golden Gate Reporting

1 that sales associates were not taking either of their
2 15-minute breaks?

3 A. Some chose not to. They would rather stay on
4 the sales floor and sell.

5 Q. Do you have any recollection of which sales
6 associates chose not to take their 15-minute breaks?

7 A. No, I don't.

8 Q. Do you have an estimate for me of the
9 percentage of sales associates, over the course of your
10 employment, that you believe chose not to take their
11 15-minute breaks?

12 A. Oh, very few, small percentage. I would say
13 less than ten. Most of the people chose to take their
14 15s. And I encouraged it when I was the manager.

15 Q. Did you ever hear anyone complain that they
16 had been unable to take their 15-minute break for any
17 reason?

18 A. I wouldn't say a -- nothing directly to me.
19 Possibly to their -- well, while I was a GM. Possibly
20 to their department managers. And this was scheduled
21 within the departments, as long as there was coverage,
22 as long as it was at a reasonable time.

23 They couldn't go from 8:45 to nine o'clock,
24 when we're going to close at nine, let's just say. It
25 just -- it would depend, yeah. But not a personal or

EXHIBIT 9

**to Declaration of William J. Goines in Opposition to
Plaintiffs' Motion for Class Certification**

Golden Gate Reporting

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 ANN OTSUKA, an individual; JANIS No. C-07-02780-SI
6 KEEFE, an individual; CORINNE
7 PHIPPS, an individual; and
8 JUSTIN KISER, an individual;
9 individually and on behalf of
10 all others similarly situated,

11 Plaintiffs,
12 vs.

13 POLO RALPH LAUREN CORPORATION;
14 a Delaware Corporation; POLO
15 RETAIL, LLC, a Delaware Corporation;
16 POLO RALPH LAUREN CORPORATION, a
17 Delaware Corporation, doing business
18 in California as POLO RETAIL CORP;
19 FASHIONS OUTLET OF AMERICA, INC., a
20 Delaware Corporation and DOES 1-500,
21 inclusive,

22 Defendants.

/

23

24 DEPOSITION OF KRISTI MOGEL

25

26 DATE: February 4, 2008

27 TIME: 10:06 a.m.

28 LOCATION: Greenberg Traurig
29 1900 University Avenue
30 Fifth Floor
31 East Palo Alto, California

32 REPORTED BY: Mary E. Garland
33 Certified Shorthand Reporter
34 License Number 4721

Page 1

Golden Gate Reporting

1 Q. What was your first position at Macy's West?

2 A. Assistant manager.

3 Q. For the San Francisco Union Square store?

4 A. Stanford, Palo Alto store.

5 Q. And the position after that?

6 A. Assistant human resource manager.

7 Q. And after serving as assistant human resources
8 manager, did you have another position?

9 A. Yes. Human resource manager at the Monterey
10 and Salinas stores.

11 Q. And following that position?

12 A. Human resource manager at Valley Fair, in Santa
13 Clara.

14 Q. And after that position?

15 A. Human resource manager in Union Square.

16 Q. And on December 9th, 2003, you began working
17 for Polo Ralph Lauren Corporation?

18 A. Correct.

19 Q. And what was your position?

20 A. Human resource manager.

21 Q. And has your title changed since you began
22 working as human resource manager for Polo?

23 A. Yes.

24 Q. How long did you serve as human resource
25 manager when you first began?

Golden Gate Reporting

1 A. All the way up until my title changed.

2 Q. When did your title change?

3 A. Approximately four months ago.

4 Q. And what is your current title?

5 A. Director.

6 Q. Director of?

7 A. Human resources.

8 Q. In your position as human resources manager you
9 held from 2003 until about four months ago, did you have
10 within the scope of your duties and responsibilities
11 more than one store?

12 A. Yes.

13 Q. Which stores did you have responsibility over?

14 A. San Francisco, Burlingame, Palo Alto, La Jolla,
15 South Coast Plaza, Beverly Hills, Ala Moana in Hawaii,
16 Las Vegas, Phoenix. And then more recently, we've had
17 some new store openings.

18 Q. Any of those in California, that you have
19 responsibilities and duties over?

20 A. Yes.

21 Q. Which ones are those?

22 A. Three stores in Malibu.

23 Q. And what stores are those?

24 A. A Men's store; a Women's store; and an RRL
25 store, R-R-L.

Golden Gate Reporting

1 Q. It reads, "This contains the detail around
2 arrears which we pulled out of the handbook and is now a
3 separate attachment."

4 Was there any discussion at this meeting, or
5 meetings, in 2004 in New York regarding whether to
6 include information about Arrears in the handbook or in
7 a separate attachment?

8 A. Not to my knowledge.

9 Q. Was there any expression of concern at that
10 meeting that it would be important not to share the
11 Arrears information with employees in California who
12 would not be subject to the Arrears based on their date
13 of hire?

14 A. It might have been a comment that I was -- I
15 had made at the time.

16 Q. What was that comment about?

17 A. My personal belief is, whenever it comes to
18 payroll and compensation, it's a private issue; and I
19 feel that's best handled in a one-on-one situation
20 between the individual who's affected and the manager.

21 Q. Has it ever been, to your knowledge, a policy
22 of Polo Ralph Lauren to prohibit sales associates in
23 California from discussing how much they were earning
24 with other sales associates?

25 A. No. It's always a public celebration, because

Golden Gate Reporting

1 we're a commission-based environment. So the results of
2 someone's sales or productivity are posted in public
3 places all over the store.

4 Q. Have you ever seen a policy that expressly
5 prohibited sales associates from discussing their wages
6 with other sales associates in California?

7 A. I did see a reference to that in the handbook,
8 that I was, I believe, told -- I can't recall by who --
9 but that that was no longer current. Our handbook was
10 outdated at the time I saw it.

11 Q. And approximately when do you recall learning
12 from someone that that policy was outdated?

13 A. I think soon after I started. They were in the
14 process of revising the handbook with several updates,
15 and that was one of them.

16 Q. During this meeting, or meetings, in New York
17 in 2004 regarding the roll-out described in Exhibit 7,
18 was there any discussion that you recall relating to the
19 payment or nonpayment of premium overtime compensation
20 to sales associates in California?

21 A. No. And I'm still -- I'm still thinking.

22 That's why I'm looking at the dates of this and trying
23 to put it together for myself.

24 As difficult as it is for me to say this, I
25 honestly do not know if I was at this meeting, if Lara

Golden Gate Reporting

1 duties and responsibilities.

2 At this point in time, how many breaks during
3 the day are sales associates permitted?

4 A. It depends on the length of their shift.

5 Q. For those sales associates on a specific date
6 who are working eight hours, how many breaks are they
7 entitled to receive from Polo during the course of that
8 eight-hour day?

9 A. That would be two breaks, two breaks a day.

10 Q. So which breaks would those be?

11 A. Be paid --

12 MR. GOINES: Your question is about rest
13 breaks; right?

14 MR. KITCHIN: Yes.

15 Q. I'm asking generally, including lunch breaks.

16 A. Oh, I apologize. I didn't understand that. An
17 eight-hour day would be one meal and two breaks.

18 Q. And when are the breaks, the rest breaks,
19 scheduled for an eight-hour-day employee?

20 A. There's a few guidelines in the book; that you
21 should do your best to take your break no earlier than
22 two hours into your shift. There's some general
23 guidelines. But those breaks are permitted and part of
24 the culture, just based on when people's appointments
25 are, and when their customers come in, and when the

Golden Gate Reporting

1 second late shift arrives.

2 Q. Prior to the roll-out of the 2007 employee
3 handbook, were there any differences, that you're aware
4 of, in the scheduling of rest breaks for sales
5 associates in any of the full-price retail stores?

6 A. To my knowledge, the rest breaks were never
7 scheduled.

8 Q. Prior to the roll-out of the 2007 --

9 MR. GOINES: I think you misunderstood his
10 question.

11 MR. KITCHIN: Yes. I'm going to reask it.

12 MR. GOINES: Thank you.

13 Q. BY MR. KITCHIN: Let's take a look at page 23,
14 which is the Bates stamp number 1524. On the right-hand
15 bottom, it says "Meal Periods and Breaks."

16 You see that?

17 A. Yes.

18 Q. The first two sentences read:

19 "Polo provides its employees with breaks and
20 meal periods in accordance with local laws. It
21 is the manager's responsibility to ensure that
22 the appropriate breaks are taken."

23 Prior to the roll-out of this handbook in April
24 of 2007, did Polo consider it the manager's
25 responsibility to ensure that sales associates were

Golden Gate Reporting

1 taking appropriate breaks?

2 A. Certainly. Ultimately, they're accountable for
3 that.

4 Q. And what policies or procedures were you aware
5 of that were in effect prior to April of 2004 for
6 managers to ensure that their sales associates within
7 their departments were taking the breaks in accordance
8 with California law?

9 A. A reinforcement of the policy was ongoing.

10 Q. Were there, to your knowledge, any written
11 documents used by any managers in the full-price retail
12 stores to track when a sales associate took a rest break
13 during their working day?

14 A. I don't believe there were any documents to
15 track that.

16 Q. Prior to April of 2007, when this manual was
17 rolled out, had you ever heard from any source, managers
18 or sales associates, that they had any concerns about
19 sales associates not taking their rest breaks during
20 their work shifts?

21 A. Never.

22 Q. Did you ever hear from any source that senior
23 sellers typically did not take their rest breaks?

24 A. No.

25 Q. Did you ever hear from any source prior to the

Golden Gate Reporting

1 terminology.

2 Q. Prior to April 2007, to your knowledge, was it
3 the policy or practice of any store over which you had
4 some duties and responsibilities to have employees find
5 a manager to perform a loss prevention inspection before
6 they clocked out?

7 A. Logistically, it would be difficult to do,
8 because many times the computers where you can clock out
9 are not near the exit. So, again, this is something
10 that is new discussion for me right here today.

11 Q. Has it been generally the practice in all of
12 the California retail stores over which you have some
13 duties and responsibilities for the sales associates to
14 clock out prior to the time that they find a manager who
15 is available to perform a loss prevention search?

16 A. Yes. They would clock out, typically, collect
17 their belongings, and leave the store.

18 Q. Have you ever learned from any source, other
19 than perhaps counsel in this action, that employees of
20 Polo Ralph Lauren in California had complained that they
21 were being required to wait what they believed was an
22 unreasonable amount of time to have loss prevention or
23 bag check inspections performed at the end of their
24 shifts?

25 A. No, I don't recall any formal complaints around

Golden Gate Reporting

1 that at all.

2 Q. Do you recall any informal complaints that
3 people were having to wait what they considered to be an
4 unreasonable amount of time to secure the assistance of
5 a manager to perform a bag check at the end of their
6 shifts?

7 A. No.

8 Q. Have you ever performed a bag check or loss
9 prevention inspection in any of the stores over which
10 you have some responsibilities and duties when a group
11 of individuals were waiting at the appropriate exit door
12 when you arrived to perform a bag check or loss
13 prevention inspection?

14 A. Once, that I recall that.

15 Q. In which store did that occur?

16 A. San Francisco.

17 Q. And was that at the designated employee exit?

18 A. It was.

19 Q. And approximately when did that happen?

20 A. I would say well over three years ago.

21 Q. Do you recall specifically who was waiting at
22 the back door when you arrived?

23 A. I don't recall.

24 Q. Do you remember the approximate number of
25 individuals who were waiting at the back door?

EXHIBIT 10

**to Declaration of William J. Goines in Opposition to
Plaintiffs' Motion for Class Certification**

Golden Gate Reporting

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 ANN OTSUKA, an individual;)
6 JANIS KEEFE, an individual,)
7 CORINNE PHIPPS, an)
8 individual; and RENEE DAVIS,)
9 an individual; individually)
10 and on behalf of all others)
11 similarly situated,)
12 Plaintiffs,)
13)

14) No. C-07-02780-SI
15 -vs-)
16)

17 POLO RALPH LAUREN CORPORATION;)
18 a Delaware Corporation; POLO)
19 RETAIL, LLC., a Delaware)
20 Corporation, POLO RALPH LAUREN)
21 CORPORATION, a Delaware)
22 Corporation, doing business in)
23 California as POLO RETAIL)
24 CORP; FASHIONS OUTLET OF)
25 AMERICA, INC., a Delaware)
26 Corporation,)
27 Defendants.)
28)

29
30 The deposition of HARVEY RESNICK, called
31 by the Plaintiffs for examination, pursuant to
32 subpoena and pursuant to the Federal Rules of
33 Civil Procedure for the United States District
34 Courts pertaining to the taking of depositions,
35 taken before Cynthia J. Conforti, Certified
36 Shorthand Reporter, at Suite 2500, 77 West Wacker
37 Drive, Chicago, Illinois, commencing at the hour
38 of 10:09 a.m. on the 23rd day of April, A.D.,
39 2008.

Page 1

Golden Gate Reporting

1 A. I believe it was an hour.

2 Q. And did sales associates clock out when
3 they began their meal break and clock back in when
4 they returned?

5 A. Yes, that's correct.

6 Q. And for sales associates who worked a full
7 eight hour or eight-hour-plus day, were they
8 specifically scheduled for rest breaks in the
9 morning and afternoon?

10 A. I don't recall ever scheduling that, but
11 they were entitled to a break. I always tried to
12 emphasize the importance of not going in groups
13 because we needed to cover the sales floor, so
14 other than that, I just pretty much left it open
15 to whenever somebody felt they needed a break.

16 Q. Did you ever hear any managers
17 discouraging sales associates from taking rest
18 breaks?

19 A. The only thing that might have been said
20 with regard to that was that some people who
21 needed to bring their sales up were the ones who
22 were most often taking -- most obviously taking
23 their breaks, and they'd be seen on break and
24 somebody might say to them, you know, "You need to
25 be selling, not taking time off the floor."

Golden Gate Reporting

1 A. It was probably mentioned, but just in
2 passing really, not so much of lodging a
3 complaint.

4 Q. So you have a general recollection of at
5 least one employee indicating to you that for some
6 reason they weren't able to take their rest
7 breaks.

8 A. Yes.

9 Q. Do you have a general recollection of the
10 number of times that you heard a sales associate
11 say something to that effect?

12 A. I don't know.

13 Q. When we were off the record, I was trying
14 to pinpoint when you worked for Polo, and do you
15 believe that you worked for Polo from July or
16 August of 2004 through approximately February of
17 2005?

18 A. Yes.

19 Q. Did you ever have a discussion with any
20 management level person at Polo about premium
21 overtime compensation for sales associates?

22 A. Yes.

23 Q. What do you recall about any conversations
24 you had about premium overtime compensation?

25 A. Well, sometime probably within the first

Golden Gate Reporting

1 that you were working and supervising your team
2 you'd sit down in the meeting and say "Harvey's
3 going to go to lunch at 11, Pats's going to go to
4 lunch at 12, Bill's going to go to lunch at one,"
5 something like that?

6 A. That's correct.

7 Q. Okay. And to the best of your
8 recollection the sales associates took their lunch
9 breaks on a daily basis during the tenure you were
10 at Polo in your group.

11 A. Yes, yes.

12 Q. Okay.

13 A. I would say that I'm sure that somewhere
14 in the tenure that I was there somebody missed a
15 lunch. I'm sure it happened.

16 Q. Okay. Fair.

17 Now, on the rest break issue, you I
18 believe used the phrase this morning that you
19 understood that your sales associates were
20 entitled to two rest breaks during the course of a
21 full workday, correct?

22 A. That is correct.

23 Q. But that at the start of the shift you
24 didn't sit down in that huddle and say when you're
25 going to take your break, when I'm going to take

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1 my break, when Patrick's going to take his break,
2 correct?

3 A. That is correct.

4 Q. You left it to the sales associates to
5 kind of figure out how the hub and flow of the day
6 went so that he or she could take a rest break?

7 A. Yes. I wanted them to take their rest
8 breaks when they really felt they needed a break,
9 not simply to take time off the floor.

10 Q. And also when it worked out in terms of
11 the actual selling of goods and services.

12 A. Absolutely, yes.

13 Q. During your tenure did any sales
14 associate, Justin or others, come to you and say,
15 "Harvey, you know, I'm not able to get my break or
16 so and so's abusing his or her break, and it's
17 just not fair, and I need you to come in and
18 referee this problem."

19 A. Probably.

20 Q. As a general rule would it be fair to say
21 you encouraged your sales associates to take their
22 rest breaks when they needed them?

23 A. Yes.

24 Q. And you know of no situation, no specific
25 situation where sales associates were not taking

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1 their rest breaks during -- as entitled during the
2 workday?

3 A. I'm not sure it's fair to characterize it
4 quite like that.

5 Q. Please. How would you characterize it?

6 A. As a manager --

7 Q. Yes, sir.

8 A. -- my feeling about the rest breaks was
9 that the sales associate was entitled to the rest
10 break. It was up to him to decide if he was going
11 to take it or not.

12 Unlike the lunch break which was mandatory
13 and I scheduled, you had to take your one hour off
14 the clock for lunch.

15 If you were feeling great, selling a lot
16 and didn't feel like you needed a break, I didn't
17 think I needed to impose a break on anybody.

18 I don't know what the law in California
19 says about that sort of thing, but that was my
20 approach, so rest breaks were as needed when
21 appropriate based on the needs of the selling
22 floor as well as the sales associates personally.

23 Q. And during your tenure did any sales
24 associate come to you and say, "Hey, Harvey, I'm
25 just not able to get my rest break. It's too

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1 busy. You know, I have no floor coverage." Did
2 you ever get any complaints like that?

3 A. Yes, I believe I did hear some people say
4 things like that. You know, in a retail
5 environment you hear a lot of stuff like that.

6 Q. Sometimes true, sometimes not true, right?

7 A. Exactly, that's right.

8 Q. So you would normally try and encourage
9 the people to work collaboratively so that they
10 got rest breaks when needed because they were
11 entitled to them.

12 A. Exactly, right.

13 Q. I don't have much more.

14 A. Okay. It's all right.

15 Q. Did any of the sales associates in your
16 team, men's clothing and men's sportswear, ever
17 complain to you about a discrepancy between the
18 hours on his or her paycheck and the hours that
19 they believed they were entitled to be paid for
20 any particular pay period?

21 A. I don't recall anybody making that
22 complaint.

23 Q. On the days that you worked and Tin also
24 worked, so you're working the same day as Tin, as
25 a general rule did Tin -- was Tin remaining on the